Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of:	)	
	)	
Request for Review of Decision of the Universal Service Administrator	)	Docket No. 02-6
	)	

Ref.: Applicant Name: Capital Region BOCES
Entity Number: 124145
Funding Year: FY 2000
471 Application Number: 159445
Funding Request Number: 342667

Background:

The referenced FRN is a part of a Form 471 application that was initially denied by USAC in its entirety, but was reinstated by USAC upon appeal. The initial denial was based on USAC's finding that a small number of members of the Capital Region BOCES consortium for FY 2000 had not submitted valid Letters of Agency ("LOAs"). The reinstatement was based on the precedent of the Commission's decision (DA 01-1620) in the case of Project Interconnect, Brooklyn Park, MN.

In the Project Interconnect case, the Commission concluded "... that to deny the entire application under these circumstances would unfairly penalize the entire consortium where only a few members of the consortium failed to produce the requested documentation."

The appeal decision denial in this case involves a much narrower situation — a single FRN within a broader consortium application. The referenced FRN involved a service used by only two member school districts, one of whom had not returned its LOA. During USAC's review of the reinstated application, it was determined that the non-compliant district's share of the total FRN was 33% of the total request amount. Invoking its "30% Rule," USAC determined that the entire FRN should be denied because "...30% or more of an applicant's funding request includes ineligible products and/or services." Essentially, in its appeal decision, USAC concluded that any request by the non-compliant district constituted an ineligible service. Interestingly, in the revised

FCDL, USAC dropped the service ineligibility argument, and simply noted that an ineligible entity was receiving service.

Issues and Arguments:

In this appeal, we ask the Commission to consider two related issues and arguments not directly addressed in the earlier Project Interconnect case.

1. We note that the Project Interconnect case dealt with the fairness of denying an entire application for LOA non-compliance by a few consortium members. The Commission concluded that, by obtaining all but a few LOAs from its members, the consortium leader had acted in good faith and that to deny the entire application would be unfair to the other members.

   This case, by way of contrast, deals with an individual FRN affecting a much more limited number of consortium members. In particular, FRN 342667 was based on a Block 4 worksheet involving only two districts. To deny this single FRN means that one of the many compliant member districts would be denied funding solely because it had the misfortune of sharing a specific service with one non-compliant district. We believe that such a decision, on a FRN-by-FRN basis, conflicts with the good faith and fairness principles established by the Commission in the Project Interconnect case.

2. The appeal denial of this FRN characterizes the portion of the requested service attributable to the non-compliant district, Schoharie CSD, as being "for ineligible products and/or services." This is not true. The FRN was for fully eligible telecommunications services provided by Middleburgh Telephone Company.

   The revised FCDL denial of this FRN takes a different approach. The denial reason is stated as "Inel. entity receiving service." This also is not true. Schoharie may have failed to return its completed LOA, but it is clearly an eligible entity (which applied for and was funded in its own right in five of the eight program years).

   We believe that a more factual characterization of Schoharie's portion of the FRN, under E-rate rules, is that it was an <u>unsubstantiated</u> request. In other words, both entity and the service itself were eligible, but 33% of the total requested amount was unsubstantiated because Capital Region BOCES did not have a LOA from Schoharie.

   As per the Commission's Iroquois West School District 10 decision (DA 05-54), we believe that USAC should have reduced the requested total by the unsubstantiated amount, and should have funded the remainder. This would have properly penalized the non-compliant district for failing to return its LOA for FY 2000, but would not unfairly penalize the compliant district who just happened to have used the same service provider.

Summary:

By this appeal, we ask the Commission to review and reverse the Administrator's decision on the referenced funding request.

Respectfully submitted,

By: ______________________

Winston E. Himsworth on behalf of
Capital Region BOCES

Dated: October 14, 2005